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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Section 73.606(b),
Table of Allotments,
TV Broadcast Stations
(Pueblo, Colorado)

) MM Docket No. 93-191
) RM-8088

In re Applications of

SANGRE DE CRISTO
COMMUNICATIONS, INC.

For Extension of Time to Construct
Television Translator K15BX
For Reinstatement of Construction
Permit for Television Translator
K15BX

) File No. BMPTT-921002JE
)
) File No. BMPTT-911105JE
)
)

For Extension of STA for
Television Translator K15BX

UNIVERSITY OF SOUTHERN
COLORADO

For Extension of Construction
Permit

) File No. BPET-930216KE
) File No. BPET-900122KE
)

For Assignment of Construction
Permit

) File No. BAPED-93 _____
)
)

For New UHF Translators at
Grand Junction, Colorado
Cortez-Red Mesa, Colorado
Durango, Colorado
Ignacio, Colorado

) File No. BPTT-930330CC
) File No. BPTT-930330CA
) File No. BPTT-930330CB
) File No. BPTT-930330CD

To the Commission:
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JOINT REPLY

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The University of Southern Colorado, [the "University"],

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Television Station KTSC(TV), Pueblo, Colorado, and Sangre de Cristo

Communications, Inc. ["SCC"], licensee of Television Station KOAA-TV, Pueblo, Colorado ["Joint Parties"], by their attorneys, submit herewith their Joint Reply to the Oppositions to their Joint Motion to Consolidate Proceedings which were filed by Pikes Peak Broadcasting Company, licensee of Stations KRDO-TV, Colorado Springs, Colorado, and KJCT-TV, Grand Junction, Colorado ["Pikes Peak"] and KKTU, Inc., licensee of KKTU, Inc., Colorado Springs, Colorado ["KKTU"].

Introduction

The Joint Motion asked the Commission to consolidate its resolution of the above-captioned matters,^{1/} all of which involve interrelated issues ultimately related to their proposed channel swap, in a single decision in the swap proposal rulemaking proceeding.^{2/} The Joint Parties demonstrated that such action would be an efficient use of the Commission's regulatory resources and would be fully consistent with this agency's authority to order its own proceedings.

Pikes Peak and KKTU do not dispute the Commission's authority to consolidate proceedings. Rather, their oppositions are solely premised upon their assertions that the Captioned Proceedings are totally unrelated so that their resolution requires multiple separate Commission decisions.^{3/}

1/ Collectively referred to as the "Captioned Proceedings."

2/ See Notice of Proposed Rule Making, MM Docket No. 93-191, DA 93-742 (July 13, 1993) ["NPRM"].

3/ Pikes Peak, for example, claims that the Captioned Proceedings "...have nothing to do with each other or the rulemaking as such." Pikes Peak Opposition at 2.

It is utterly flabbergasting that these parties would base their oppositions on such an obviously fallacious position,^{4/} particularly given these parties' pleadings and positions in those proceedings^{5/} and, more particularly, their comments in response to the NPRM. Indeed, the flimsy nature of their opposition serves only to emphasize that their ultimate goal is delay: separate resolution of the proceedings they have initiated would harm the University and SCC and thus afford Pikes Peak and KKTv a victory in fact no matter what the proceedings' legal outcome.^{6/}

4/ The timing of Pikes Peak's and KKTv's participation in the Captioned Proceedings, without more, would demonstrate the interrelationship of the proceedings: as the Joint Parties have previously noted, those licensees showed no interest in the University's construction permit or SCC's translator STA until after the proposed swap was announced. Further, opposition to the University's translator applications was premised on the existence of the swap.

5/ Pikes Peak's and KKTv's prior pleadings in the Captioned Proceedings are replete with interrelated cross-references to each other, see, e.g., Pikes Peak "Opposition to Extension of STA" (July 9, 1993) at 2 and n. 2, and to the proposed swap, see, e.g., Pikes Peak "Petition for Issuance of Order to Show Cause," (December 2, 1992) at 5 et seq.; KKTv "Petition for Issuance of Order to Show Cause," (December 4, 1992).

6/ The Joint Motion for Issuance of an Order to Show Cause which SCC and the University filed on March 1, 1993, demonstrated that Pikes Peak's and KKTv's repetitive obstructive pleadings flagrantly abuse the Commission's processes. Such abuse could be mitigated by consolidated consideration of these related matters.

**KKTV and Pikes Peak Clearly Acknowledge that
The Captioned Proceedings Involve Identical Issues**

KKTV claims at page 3 of its Opposition that "...a consolidation of the University's application to extend its construction permit is only marginally relevant to the rulemaking proceeding announced by the NPRM." If this is so, why did KKTV waste the Commission's time by devoting eight pages of its 23-page rulemaking comments to a discussion of the KTSC Construction Permit, including one section specifically captioned "The USC Construction Permit Should Not Be Extended"? If this is so, why did KKTV attach to its Comments copies of its pleading seeking revocation of the KTSC Construction Permit and its petition opposing the University's construction permit extension application? Surely, KKTV would not have bothered the Commission with such voluminous submissions if they were not so inextricably involved with the issues presented by the rulemaking.

The facts are that they are interrelated, that KKTV obviously recognizes that this is the case, and that KKTV opposes the motion simply because separate seriatim resolution of the Captioned Proceedings will obviously require more time than a consolidated single decision.

Pikes Peak echoes KKTV's arguments concerning the alleged independence of the Captioned Proceedings. Again, however, its rulemaking

comments disclose its Janus-like posture, as they specifically cite its earlier filed pleadings and depend on their claims to support its position.^{7/}

The NPRM, too, reflects the interrelationship of the various proceedings,^{8/} referencing, for example, the pendency of the construction permit extension application^{9/} and SCC's STA for K15BX's operation.^{10/}

Pikes Peak's and KKTV's Comments speak more accurately than their Oppositions with respect to the Joint Parties' requested consolidation. Those Comments confirm what the Joint Motion and the pleadings in the Captioned Proceedings have so firmly established: that the issues in the Captioned Proceedings are so completely interrelated that consolidated resolution in a single decision is the action which would most fully serve the ends of justice and efficient administration.

7/ See, e.g., Comments of Pikes Peak Broadcasting Company, MM Docket No. 93-191, RM-8088 (September 3, 1993) at nn. 2, 6, 8, 15. Pikes Peak also utilizes its Comments to reargue positions taken in certain of the Captioned Proceedings, see, e.g., id. at n. 14, where Pikes Peak repeats its earlier arguments concerning the status of SCC's construction permit for television translator K15BX.

8/ The NPRM appeared to invite the filing of an application for assignment of the KTSC Construction Permit and on September 2, 1993, that was accomplished. Pikes Peak's objections in that regard, Pikes Peak Opposition at 4, are thus moot. The Joint Parties fully anticipate that both KKTV and Pikes Peak will add to the list of pleadings filed in Captioned Proceedings by opposing that application, repeating virtually all of their previous arguments.

9/ NPRM at n.1.

10/ Id. at n. 3.

Significantly, there would be no delay associated with consolidation: apart from two pending application proceedings,^{11/} the pleading cycles in the Captioned Proceedings have been completed and all are or will soon be ripe for decision. KKTv, however, suggests that if the Commission were to consolidate the proceedings, additional pleadings would have to be filed, causing yet further delay. The Joint Parties are at a loss to understand, nor does KKTv explain, why consolidation would require further submissions where all pleadings contemplated by the rules have already been submitted and the issues fully briefed.

KKTv also fails to explain why it would be more expeditious for the Commission to have to write multiple decisions than to write a single decision. Again, the absurdity of KKTv's position is self-evident.

Conclusion

The issues involved in the Captioned Proceedings were prompted by and are dependent upon the issues raised by the NPRM. It would be both logical and optimally efficient for the Commission to resolve them in a single decision issued in response to the NPRM. Such consolidation would enable the Commission to resolve these interrelated issues once, in a single Report and Order, rather than in

^{11/} A reply to Pikes Peak's Opposition to the University's translator applications is due today, closing the pleading cycle. Pleadings have not yet been filed with respect to the recently-filed application for assignment of the University's Cheyenne Mountain Construction Permit, but that pleading cycle should close well before the Commission would normally issue a decision in the rulemaking proceeding.

seven separate decisions. And, it is submitted, such a result is clearly consistent with the public interest in administrative efficiency.

The University of Southern Colorado and Sangre de Cristo Communications, Inc. therefore respectfully request that the Commission consolidate the above-captioned proceedings for consideration in connection with its decision in response to the NPRM.

Respectfully submitted,

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September 13, 1993

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